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6 CHIPOTLE MEXICAN GRILL, INC.
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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 BIANCA ABOYTES,

16 Plaintiff,

17 v.

18 CHIPOTLE MEXICAN GRILL, INC.,
and DOES 1 through 75, inclusive,

19 Defendants
20
21
22
23

Case No.:

**NOTICE OF REMOVAL UNDER 28
U.S.C. §§ 1332, 1441 & 1446 BY
DEFENDANT CHIPOTLE MEXICAN
GRILL, INC.**

Action Filed: June 28, 2017
Removal Date: August 17, 2017
Trial Date: Not Set

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE THAT Defendant Chipotle Mexican Grill, Inc.
3 (“Defendant” or “Chipotle”), by and through undersigned counsel, hereby removes this
4 action to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. In support of its
5 removal, Chipotle states as follows:

6 1. Complaint Filed June 28, 2017. On June 28, 2017, Plaintiff Bianca
7 Aboytes commenced this civil action by filing a Complaint in the Superior Court of the
8 State of California for the County of Orange, captioned *Bianca Aboytes v. Chipotle*
9 *Mexican Grill, Inc., and DOES 1 through 75, inclusive*; Case No. 30-2017-00928839-
10 CU-PO-CJC. True and correct copies of the Complaint for Damages, Statement of
11 Damages, Summons and Civil Cover Sheet are filed herewith as **Exhibit A**.

12 2. Chipotle was served with the Complaint on July 20, 2017. Defendant was
13 personally served on July 20, 2017. A true and correct copy of the Proof of Service is
14 filed herewith as **Exhibit B**.

15 3. Chipotle Answered the Complaint on August 16, 2017. Chipotle filed its
16 Answer to the Complaint in the Orange County Superior Court on August 16, 2017. A
17 true and correct copy of that Answer is filed herewith as **Exhibit C**.

18 4. Other Filings. The Orange County Superior Court issued a Notice of Case
19 Assignment on June 28, 2017. On July 31, 2017, Plaintiff filed a Proof of Service of
20 Summons. On August 7, 2017, the Orange County Superior Court issued a Notice of
21 Hearing. True and correct copies of these documents are filed herewith as **Exhibit D**.

22 5. There are no other documents of which Chipotle is aware that are on file
23 with the Orange County Superior Court in this action.

24 6. Removal Timely. This Notice of Removal is timely as it is filed within 30
25 days of Chipotle being served with the Complaint.

26 7. The action is pending in the Orange County Superior Court, which court is
27 in the territory of the United States District Court for the Central District of California.

1 8. Diversity Jurisdiction Proper. This matter is a civil action of which this
2 Court has original jurisdiction under 28 U.S.C. § 1332(a), and is one which may be
3 removed to this Court by Chipotle pursuant to 28 U.S.C. § 1441(a), in that it is a civil
4 action between citizens of different states and the matter in controversy exceeds the sum
5 of \$75,000, exclusive of interest and costs.

6 9. Diversity of Citizenship Exists Between Parties. Plaintiff at all times
7 relevant was domiciled and a resident of the State of California. (See **Exhibit A**,
8 Complaint for Damages, ¶ 7.) As discussed in detail below, Chipotle is a citizen of the
9 States of Delaware and Colorado. Therefore, diversity of citizenship exists and supports
10 removal under 28 U.S.C. § 1332(a). Although the Complaint names “Doe” defendants,
11 for purposes of removal, “the citizenship of defendants sued under fictitious names shall
12 be disregarded.” 28 U.S.C. § 1441(b)(1).

13 10. Defendant Chipotle Mexican Grill, Inc. is a Citizen of Delaware and
14 Colorado. Defendant in this action is diverse. For diversity purposes, under 28 U.S.C.
15 §1332(c)(1), a corporation is deemed to be a citizen of every State and foreign state by
16 which it has been incorporated and of the State or foreign state where it has a principal
17 place of business. Chipotle is a defendant and is diverse as it is a Delaware corporation
18 with its principal place of business in Colorado. (See Declaration of Esther Smiley at ¶
19 4. A true and correct copy is filed herewith as **Exhibit E**).

20 11. Chipotle Mexican Grill, Inc. is a Delaware Corporation. A corporation is
21 a citizen both of the state in which it is incorporated and of the state where it has its
22 principal place of business. See 28 U.S.C. § 1332(c). Chipotle Mexican Grill, Inc. is
23 incorporated under the laws of Delaware. (See **Exhibit E** at ¶ 4.)

24 12. Defendant Chipotle Mexican Grill’s Principal Place of Business is in
25 Colorado. Under the “nerve center” test articulated in *Hertz Corp. v. Friend*, 559 U.S.
26 77, 130 S. Ct. 1181, 175 L. Ed. 2d 1029 (2010), a corporation’s “principal place of
27 business” refers to the place where the corporation’s high level officers direct, control,
28 and coordinate the corporation’s activities.” *Id.* at 1186 (citing *Wisconsin Knife Works v.*

1 *National Metal Crafters*, 781 F.2d 1280, 1282 (7th Cir. 1986); *Scot Typewriter Co. v.*
2 *Underwood Corp.*, 170 F. Supp. 862, 865 (S.D.N.Y. 1959)). As explained in **Exhibit E**,
3 Chipotle’s high-level officers direct, control and coordinate the corporation’s activities
4 throughout the United States and internationally from its corporate headquarters in
5 Denver, Colorado.

6 13. Chipotle Mexican Grill, Inc. is headquartered at 1401 Wynkoop Street,
7 Suite 500, Denver, CO 80202 (“Chipotle’s corporate headquarters”). (See **Exhibit E** at
8 ¶ 5 [identifying 1401 Wynkoop Street, Suite 500, Denver, Colorado 80202], as the
9 address of Defendant’s “Principal Executive Offices”). Chipotle Mexican Grill, Inc. and
10 its affiliates employ approximately 250 people at the corporation’s headquarters in
11 Denver, Colorado. (*Id.*) As explained in detail below, the majority of Chipotle’s
12 executive officers and principal decision-makers are headquartered in, and work from,
13 its Denver offices. (*Id.* at ¶¶ 13-23.)

14 14. Although Chipotle Mexican Grill, Inc. does maintain a few other offices in
15 other parts of the United States, each such office serves a limited purpose and houses a
16 relatively small number of employees. (See *Id.* at ¶¶ 6-10.)

17 15. There is a presumption that Chipotle’s principal place of business is
18 located at its Denver headquarters. See *Friend*, 130 S. Ct. at 1192 (a corporation’s
19 “‘principal place of business’ ... in practice ... should normally be the place where the
20 corporation maintains its headquarters”) & 1193-94 (“A corporation’s ‘nerve center,’
21 usually its main headquarters, is a single place.”; “A ‘nerve center’ approach, which
22 ordinarily equates that ‘center’ with a corporation’s headquarters....”); *Wisconsin Knife*
23 *Works*, 781 F.2d at 1282 (“In the absence of any reason to think that Black & Decker’s
24 principal place of business might be in Illinois or Delaware, the two states of which the
25 Defendant is a citizen, the fact that its headquarters is in Maryland warrants an inference
26 that the parties are of diverse citizenship.”).

1 16. In addition to serving as its headquarters, Chipotle's Denver offices are
2 also its "nerve center" because it is the place from which its "high level officers direct,
3 control, and coordinate the corporation's activities." *Friend*, 130 S. Ct. at 1186.

4 17. Although, as of December 31, 2016 (the date reported in Chipotle's most
5 recently filed Form 10-K), Chipotle Mexican Grill, Inc. operated more than 2,000
6 restaurants throughout the United States, as well as in Canada, England, France and
7 Germany (*see Exhibit E* at ¶ 28), the operations of those restaurants are directed,
8 controlled and coordinated by the high-level officers resident in Chipotle's corporate
9 headquarters. Where, as with Chipotle Mexican Grill, Inc., "a corporation is engaged in
10 far-flung and varied activities which are carried on in different states, its principal place
11 of business is the nerve center from which it radiates out to its constituent parts and from
12 which its officers direct, control and coordinate all activities without regard to locale, in
13 the furtherance of the corporate objective.'" *Friend*, 130 S. Ct. at 1191 (quoting *Scot*
14 *Typewriter Co.*, 170 F. Supp. at 865).

15 18. Chipotle's principal decision makers are its executive officers, executive
16 directors, board of directors, executive regional directors and executive team directors.
17 (*See* the Declaration of Esther Smiley, **Exhibit E** at ¶ 11.)

18 19. Each of Chipotle's three primary executive officers has offices in and
19 works from the corporation's Denver headquarters, with two of them also working part
20 of their time from a small executive office in New York City. (*Id.* at ¶¶ 12-17.)

21 20. Chipotle Mexican Grill, Inc.'s Chief Executive Officer is the principal
22 executive officer of the organization and is responsible for the total management of
23 Chipotle Mexican Grill, Inc. by facilitating the operation of its business while guiding its
24 officers and employees in furtherance of the company's objectives. (*Id.* at ¶ 13.)
25 Chipotle Mexican Grill, Inc.'s Chief Executive Officer splits his time between
26 Chipotle's corporate headquarters and a small executive office located in New York,
27 New York. (*Id.*)
28

1 21. Chipotle Mexican Grill, Inc.’s Chief Financial Officer – who is the
2 corporation’s principal financial and accounting officer and is responsible for all
3 financial, accounting and reporting functions of Chipotle Mexican Grill, Inc. – works at
4 Chipotle’s corporate headquarters. (**Exhibit E** at ¶ 14.)

5 22. Chipotle Mexican Grill, Inc.’s Chief Marketing and Development Officer
6 is responsible for crafting Chipotle Mexican Grill, Inc.’s marketing direction and
7 message, deepening its relationship with customers and continuing to attract new
8 customers, and who oversees all advertising and promotional programs (including print,
9 outdoor, transit and radio advertisements), in-store communications and design elements
10 (such as menus and signs). He also oversees Chipotle’s physical expansion by
11 overseeing the identification of new markets for Chipotle restaurants and the
12 construction of new restaurants in appropriate markets, throughout the United States and
13 internationally. The Chief Creative and Development Officer splits his time between the
14 corporation’s executive office in New York City and Chipotle’s corporate headquarters.
15 (*Id.* at ¶ 15.)

16 23. Chipotle Mexican Grill, Inc.’s Chief Digital Information Officer is
17 responsible for managing the company’s technological innovations, including the
18 development of the company’s digital and mobile ordering platforms and strategy. The
19 Chief Information Officer works at Chipotle’s corporate headquarters. (*Id.* at ¶ 16.)

20 24. Chipotle Mexican Grill, Inc.’s Chief Restaurant Officer oversees restaurant
21 operations for Chipotle’s North American restaurants. The Chief Restaurant Officer is
22 based at Chipotle’s corporate headquarters. (*Id.* at ¶ 17.)

23 25. Chipotle Mexican Grill, Inc. and its affiliates also employ two Restaurant
24 Support Officers, who are responsible for the overall restaurant operations within their
25 respective regions. (*Id.* at ¶ 18.) Both of the Restaurant Support Officers are based in
26 Denver, but spend the majority of their time working in the field and traveling between
27 the restaurants in their respective regions. (*Id.*)

1 26. Three of Chipotle Mexican Grill, Inc.'s executive directors' work at
2 Chipotle's corporate headquarters and the other works at the corporation's executive
3 office in New York City. (*See Exhibit E* at ¶¶ 19-23.)

4 27. Chipotle Mexican Grill, Inc.'s Executive Director of Food Safety is
5 responsible for overseeing the overall food safety plan, throughout the United States and
6 internationally and works at Chipotle's corporate headquarters. (*Id.* at ¶ 20.)

7 28. Chipotle's Executive Director of Supply Chain and Safety is responsible
8 for overseeing the procurement of food ingredients, equipment and supplies for all
9 Defendant's restaurants, throughout the United States and internationally, and is
10 responsible for managing and mitigating all potential sources of risk to the corporation,
11 its employees and its assets and works at Chipotle's corporate headquarters. (*Id.* at ¶
12 21.)

13 29. Chipotle Mexican Grill, Inc.'s Executive Director – Financial Planning &
14 Analysis is responsible for Chipotle Mexican Grill, Inc.'s financial planning, budgeting
15 and providing financial analysis support for the organization's operations and support
16 departments, and works at Chipotle's corporate headquarters. (*Id.* at ¶ 22.).

17 30. Chipotle Mexican Grill, Inc.'s Executive Director of Marketing is
18 responsible for overseeing marketing operations and implementing marketing strategies.
19 He works at the corporation's executive office in New York City. (*Id.* at ¶ 23.)

20 31. Chipotle Mexican Grill, Inc.'s board of directors consists of twelve
21 members, including the corporation's CEO. (*See Exhibit E* at ¶ 24.) The members of
22 Chipotle Mexican Grill, Inc.'s board of directors are responsible for adopting policies
23 to support the company's values and to provide good corporate governance for the
24 entire corporation. (*Id.*) Chipotle Mexican Grill, Inc.'s board of directors typically
25 meets three or four times per year in Denver, Colorado, and one time per year in some
26 other, varying location. (*Id.*)

27 32. Chipotle Mexican Grill, Inc. and its affiliates also employ in each of the
28 eleven (11) regions: Northeast North, Central South, Southeast, Pacific South, Mid-

1 Atlantic, Central North, Northeast South, Rocky Mountain, Pacific North, Southwest,
2 and Mid-America. Most of the regions include multiple States, and some of them
3 include portions of foreign countries. California is divided among the Pacific North
4 and Pacific South regions an Executive Team Director who is responsible for business
5 operations in his or her region and an Executive Regional Director who is responsible
6 for multiple regions. Each of the Executive Regional Directors and Executive Team
7 Directors spends the majority of their time working at, and traveling between, the
8 restaurants in their respective region, rather than working from a fixed office location.
9 (*Id.* at ¶ 25.)

10 33. In addition, Chipotle Mexican Grill, Inc.’s Customer Service department
11 is located in its Denver headquarters. (**Exhibit E** at ¶ 27.)

12 34. Thus, Chipotle’s corporate headquarters is not simply an office where the
13 corporation holds its board meetings or where its principal decision makers can work
14 when they happen to be in Colorado. (*See Id.* at ¶ 30; *see also Friend*, 130 S. Ct. at
15 1192 [A corporation’s “‘principal place of business’ ... should normally be the place
16 where the corporation maintains its headquarters – provided that the headquarters is ...
17 not simply an office where the corporation holds its board meetings....”].)

18 35. Although Chipotle Mexican Grill, Inc. and its affiliates together employ
19 over 60,000 people and operate more than 2,000 restaurants throughout the United
20 States, as well as in Canada, England, France and Germany, almost all of the
21 company’s high-level officers who direct, control and coordinate its activities work
22 from the Chipotle’s corporate headquarters. In fact, only two of Chipotle’s principal
23 decision makers – an Executive Team Director and an Executive Regional Director –
24 are residents of California, but even they split their time working throughout that State.
25 (*See Exhibit E* at ¶ 26) As such, virtually all of Chipotle Mexican Grill, Inc.’s core
26 executive and operational functions are carried out from its Chipotle’s corporate
27 headquarters, and, to a much lesser extent, from its small office in New York City.
28 With the exception of some accounting functions that are performed by employees in

1 Columbus, Ohio, Defendant's major administrative functions are conducted at
2 Chipotle's corporate headquarters, as well. (*Id.* at ¶ 29.)

3 36. This evidence demonstrates that Chipotle Mexican Grill, Inc.'s "nerve
4 center" is Chipotle's corporate headquarters. *See Friend*, 130 S. Ct. at 1186 ("To
5 support its position [that its "nerve center" was in New Jersey], Hertz submitted a
6 declaration by an employee relations manager that ... stated that the 'leadership of
7 Hertz and its domestic subsidiaries is located at Hertz's 'corporate headquarters' in
8 Park Ridge, New Jersey; that its 'core executive and administrative functions ... are
9 carried out' there and 'to a lesser extent' in Oklahoma City, Oklahoma; and that its
10 'major administrative operations ... are found' at those two locations."); *Scot*
11 *Typewriter Co.*, 170 F. Supp. at 864 ("The executive offices of the defendant are
12 located in New York; its president and Chairman of the Board, three of five Vice-
13 Presidents, its Treasurer and Assistant Treasurer, Secretary, Comptroller, Director of
14 Dealer Sales and Director of Installment Sale Collections all maintain offices there.
15 Basic policy decisions are made in the New York office. The personnel, industrial
16 relations, public relations, purchasing, rental and general services, general office sales,
17 international, advertising and sales promotion departments are all headquartered in
18 New York. Customer relations with respect to service, credit, and accounting, affecting
19 sales wherever made, are administered from New York.").

20 37. The Amount in Controversy Exceeds \$75,000.00. For the Court to have
21 original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a), the matter in
22 controversy must exceed the sum or value of \$75,000, exclusive of interest and costs.

23 38. Plaintiff served a Statement of Damages claiming general damages in the
24 amount of \$1,000,000.00 (*See Exhibit A*, Statement of Damages). Further, Plaintiff
25 claims she has suffered medical, and will suffer future medical, expenses.¹ (*Id.*)

26 ¹ Defendant does not concede that Plaintiff is likely to prevail on any of the asserted
27 claims or that, if Plaintiff does prevail on any of the asserted claims, that she is entitled
28 to any benefits, damages or other relief. Defendant reserves the right to dispute, and to
defend against, the asserted claims, both with regard to liability and all forms of
requested damages and relief. *See Lewis v. Verizon Comm., Inc.*, 627 F.3d 395, 400 (9th

Moreover, Plaintiff claims loss of earnings to date of \$5,000.00 and future loss of earnings of \$50,000.00. Plaintiff's claimed damages clearly exceeds the statutory amount in controversy.

39. Indeed, specific jury verdicts in premise liability cases in California indicate that verdict awards and settlements may be well in excess of the jurisdictional requisite:

a. *Marie Carchedi v. Safeway Inc.*, 2003 WL 26082534 (Cal.Super.); California Superior Court, County of Santa Clara; Case No.: CV800910, (Verdict Date: January 17, 2003): awarding Plaintiff, \$291,000.00 (\$206,000.00 in economic damages; \$85,000.00 in noneconomic damages) in connection with a premise liability/negligence action with claims for personal injuries, medical expenses, lost income and loss of earning capacity (The plaintiff's award was reduced in judgment to \$276,450.00 to offset her 5 percent contributory negligence.).

b. *Carticellia McLean v. Toys R Us*, 2006 WL 3491172 (Cal.Super.); California Superior Court, County of Riverside; Case No.: RIC412550, (Verdict Date: September 06, 2006): awarding Plaintiff \$337,000 in connection with a premise liability action with claims for lost income and pain and suffering (The case was settled for \$380,000 before judgment entry.).

c. *Dulay v. City of Long Beach*, 24 Trials Digest 19th 24, 2016 WL 3345743 (Cal.Super.); California Superior Court, County of Los Angeles; Case No.: BC510145, (Verdict Date: September 06, 2006): awarding Plaintiff \$184,410 (\$4,410 to plaintiff for past medical expenses; \$25,000 to plaintiff for future medical expenses; \$75,000 to plaintiff for past noneconomic loss; \$80,000 to plaintiff for future noneconomic loss) in connection with a premise liability action. (The jury found plaintiff was 25 percent at fault and defendant was 75 percent at fault. The court reduced the award to \$138,308.).

Cir. 2010) (to establish the jurisdictional amount, a removing defendant need not concede liability for that amount).

1 d. *Chakarian v. Jack in the Box Inc.*, 30 Trials Digest 19th 28, 2016
2 WL 4036296 (Cal.Super.); California Superior Court, County of Los Angeles; Case
3 No.: BC549011, (Verdict Date: June 23, 2016): awarding Plaintiff \$3,179,638
4 (\$129,638 to plaintiff from defendant for past medical expenses; \$1,500,000 to
5 plaintiff from defendant for future medical expenses; \$550,000 to plaintiff from
6 defendant for past pain and suffering; \$1,000,000 to plaintiff from defendant for future
7 pain and suffering) in connection with a premise liability/negligence action.

8 e. *Ballard v. Storagepro Inc.*, 48 Trials Digest 19th 6, 2016 WL
9 6995401 (Cal.Super.); California Superior Court, County of San Francisco; Case No.:
10 CGC-14-541994, (Verdict Date: June 15, 2016): awarding Plaintiff \$238,517 (\$10,000
11 for past medical expenses; \$73,517 for future medical expenses; \$55,000 for past lost
12 income; \$100,000 for past pain and suffering) in connection with a premise
13 liability/negligence action.

14 f. *Villagran v. Smart & Final Stores L.L.C.*, 16 Trials Digest 19th 17,
15 2016 WL 1597204 (Cal.Super.); California Superior Court, County of Los Angeles;
16 Case No.: BC543564, (Verdict Date: March 15, 2016): awarding Plaintiff \$1,243,757
17 (\$115,126 for past medical expenses; \$228,631 for future medical expenses; \$500,000
18 for past noneconomic damages; \$400,000 for future noneconomic damages) in
19 connection with a premise liability/negligence action.

20 g. *Margarita Chavez v. Wal-Mart Stores Inc.*, 2009 WL 6022126
21 (Cal.Super.); California Superior Court, County of Los Angeles; Case No.: VC-
22 050680, (Verdict Date: July 24, 2009): awarding Plaintiff \$321,000 in connection with
23 a premise liability/negligence action.

24 h. *Vera Huelbig v. Prometheus Real Estate Group Inc. DBA*
25 *Alderwood Apartments et al.*, 27 Nat. J.V.R.A. 4:C10, 2011 WL 10550297
26 (Cal.Super.); California Superior Court, County of Santa Clara; Case No.:
27 110CV186515, (Settlement Date: October 05, 2011): awarding Plaintiff \$750,000
28

1 (settled on the first day of trial. A pre-trial settlement conference, conducted by
2 presiding judge Leslie Nichols) in connection with a premise liability action.

3 40. Plaintiff also alleges that she is entitled to recover costs of the suit. (See
4 **Exhibit A**, Complaint pg. 5.)

5 41. When the potential costs of special damages and general damages are
6 added to Plaintiff's claims for lost wages, it easily becomes "more likely than not" that
7 the amount at issue in this lawsuit far exceeds the minimum amount required for
8 diversity jurisdiction. *See Sanchez v. Monumental Life Ins. Co.*, 95 F.3d 856, 860 (9th
9 Cir. 1996).

10
11 Dated: August 17, 2017

MESSNER REEVES LLP

12 By: /s/ Robert B. Hinckley, Jr.

13 Robert B. Hinckley, Jr.

14 Melissa L. Deni

15 Attorneys for Defendant
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